TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1928

No. 711

J. R. WHEELER, PETITIONER,

vs.

HOWARD GREENE, RECEIVER OF THE BANKERS JOINT STOCK LAND BANK OF MILWAUKEE, WISCONSIN

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 21, 1929

CERTIORARI GRANTED APRIL 15, 1929

(34,020)

(34,020)

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[fol. 1] [Caption omitted]

[fol. 2]

IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF WISCONSIN

COMPLAINT—Filed Apr. 2, 1928

The complaint of the plaintiff by Miller, Mack & Fairchild, his attorneys, for cause of action against the defendant, respectfully shows to the Court and alleges that:

1. The Bankers Joint Stock Land Bank of Milwaukee at the times hereinafter mentioned was and now is a joint stock land bank duly organized and existing under and by virtue of the Federal Farm Loan Act of the United States with a capital of $1,200,000.00 divided into 12,000 shares of the par value of $100.00 each, all of which were and are issued and outstanding.

2. The plaintiff, Howard Greene, is and was at all times subsequent to the 1st day of July, 1927, the statutory Receiver of the Bankers Joint Stock Land Bank of Milwaukee, duly appointed and qualified pursuant to an order of the Federal Farm Loan Board, entered on the 1st day of July, 1927, under the authority of Section 29 of the Federal Farm Loan Act, which said order directs said plaintiff, Howard Greene, as such Receiver, to take possession of the books, records and assets of every description of said bank; to collect and account for all debts due and claims belonging to it, and to take such other steps as may be proper and necessary in the premises and as the Federal Farm Loan Board may from time to time direct or approve in accordance with the provisions of the Federal Farm Loan Act.

3. The defendant is a citizen of the State of Wisconsin and a resident of the City of Milwaukee in the Eastern District of said State of Wisconsin.

4. On and prior to the 1st day of July, 1927, the defendant was and ever since has been the holder of fifty (50) shares of stock of said Bankers Joint Stock Land Bank of Milwaukee.

5. By order dated the 11th day of January, 1928, a copy of which is hereunto annexed, made a part hereof and marked "Exhibit A," the Federal Farm Loan Board levied an assessment and requisition upon the shareholders on July 1st, 1927, of the Bankers Joint Stock Land Bank of Milwaukee in the sum of $1,200,000, being the aggregate amount of the par value of the capital stock of said bank, to be paid by such shareholders ratably on or before the 1st day of March, 1928, and by said order made demand [fol. 3] upon each and every one of said shareholders for the amount of the par value of each and every one of their respective shares of the capital stock of said bank, and directed the plaintiff, Howard Greene, as such Receiver of said bank, to take all necessary proceedings by suit or otherwise to enforce the said liability of the said shareholders.

6. Pursuant to said order aforesaid, the plaintiff duly made demand upon the defendant that he pay the assessment upon the said fifty (50) shares of stock so held by him in said Bankers Joint Stock Land Bank of Milwaukee on the 1st day of July, 1927, in the sum of Five Thousand Dollars ($5,000), being the aggregate amount of the par value of said capital stock so held by said defendant, but said defendant has wholly failed, refused and neglected to make payment of said assessment, or any part thereof, and said assessment remains wholly unpaid and unsatisfied.

7. By reason of the facts aforesaid, said defendant is indebted to the plaintiff, Howard Greene, Receiver, in the sum of Five Thousand Dollars ($5,000), with interest thereon at the rate of six per cent per annum from and after the 1st day of March, 1928.

Wherefore, plaintiff prays judgment against said defendant for Five Thousand Dollars ($5,000), together with interest thereon from the 1st day of March, 1928, at the rate of six per cent per annum, and the costs and disbursements of this action.

Miller, Mack & Fairchild, Attorneys for Plaintiff.

[fol. 4] *Duly sworn to by Howard Greene. Jurat omitted in printing.*

EXHIBIT A TO COMPLAINT

Treasury Department, Washington, Federal Farm Loan Bureau

Assessment upon Shareholders of the Bankers Joint Stock Land Bank of Milwaukee, Milwaukee, Wisconsin

January 11, 1928.

To whom it may concern:

Whereas, upon consideration of the report submitted on January 9, 1928, by the Receiver of the Bankers Joint Stock Land Bank of Milwaukee, Howard Greene of Milwaukee, Wisconsin, appointed on July 1, 1927, by the Federal Farm Loan Board pursuant to the provisions of Section 29 of the Federal Farm Loan Act, and a valuation of the assets of said Bank in his hands as such Receiver, it appears to the satisfaction of the Federal Farm Loan Board that for the payment of the debts of the said Bankers Joint Stock Land Bank of Milwaukee it is necessary to enforce the individual liability under section 16 of the Federal Farm Loan Act of the shareholders of said bank;

Now, therefore, by virtue of the powers vested in it by [fol. 5] law, the Federal Farm Loan Board hereby makes and levies an assessment and requisition upon the shareholders on July 1, 1927, of the said Bankers Joint Stock Land Bank of Milwaukee for $1,200,000, being the aggregate amount of the par value of the capital stock of said Bank, to be paid by them ratably on or before the 1st day of March, 1928, and hereby makes demand upon each and every one of said shareholders for the amount of the par value of each and every one of said shareholders for the amount of the par value of each and every one of his respective shares of the capital stock of said Bank; and hereby directs the said Receiver to take all necessary proceedings, by suit or otherwise, to enforce the said liability of the said shareholders.

The Receiver is authorized to grant an extension of time, without interest, to any shareholder who pays 25 per cent of the said assessment on or before March 1, 1928, and who gives a written obligation, satisfactorily guaranteed, to pay 25 per cent additional on or before April 1, 1928, 25

per cent additional on or before May 1, 1928, and the remaining 25 per cent on or before June 1, 1928.

In witness whereof the said Federal Farm Loan Board has caused this instrument to be executed at the City of Washington, in the District of Columbia, this 11th day of January, 1928.

Federal Farm Loan Board, by Chester Morrill, Secretary and General Counsel.

IN UNITED STATES DISTRICT COURT

PRÆCIPE FOR SUMMONS—Filed Apr. 2, 1928

To B. H. Westfahl, Esquire, Clerk of the above-named Court:

Please issue a summons in the above entitled action, providing for service thereof, with a copy of the complaint attached thereto, upon the above named defendant.

Dated March 31st, 1928.

Miller, Mack & Fairchild, Attorneys for Plaintiff.

Postoffice address: 1504 First Wisconsin National Bank Bldg., Milwaukee, Wisconsin.

[fol. 6] IN UNITED STATES DISTRICT COURT

SUMMONS AND MARSHAL'S RETURN

The President of the United States of America to the said Defendant:

You a.e hereby summoned to appear within twenty days after service of this summons, exclusive of the day of service, and defend the above-entitled action in the court aforesaid; and in case of your failing so to do, judgment will be rendered against you according to the demand of the complaint, of which a copy is herewith served upon you.

The Marshal of said District is hereby commanded to serve this summons, and make due return thereto.

Witness, the Honorable Ferdinand A. Geiger, Judge of the District Court of the United States, for the Eastern District of Wisconsin, at the City of Milwaukee, in the said District, this 2nd day of April, in the year of our Lord one thousand nine hundred and twenty-eight and of the Independence of the United States the 152nd.

(Signed) B. H. Westfahl, Clerk. Miller, Mack & Fairchild, Plaintiff's Attorneys.

P. O. address: Milwaukee, Wis.

Marshal's Return

Served on the within-named J. R. Wheeler by showing him this summons and complaint, and by delivering to him personally a copy thereof, this 4th day of April, A. D. 1928 at Milwaukee, Wis.

Fees:

Service	2.00
Copies	....
Travel	.14
	$2.14

R. J. White, Marshal, by G. W. Hayden, Deputy.

[fol. 7] In United States District Court

Demurrer—Filed Apr. 23, 1928

Now comes the above named defendant by Quarles, Spence & Quarles, Newman, Poppenhusen, Stern & Johnston, and Bulkley, Hauxhurst, Jamison & Sharp, his attorneys, and demurs to the complaint herein on the ground that it appears upon the face thereof that said complaint does not state facts sufficient to constitute a cause of action.

Quarles, Spence & Quarles, Newman, Poppenhusen, Stern & Johnson, and Bulkley, Hauxhurst, Jamison, & Sharp, Defendant's Attorneys.

Dated April 23, 1928.

IN UNITED STATES DISTRICT COURT

Before the Honorable Ferdinand A. Geiger, Judge

ORDER SUSTAINING DEMURRER—Filed May 16, 1928

The demurrer of the defendant, J. R. Wheeler to the complaint having been heretofore argued and submitted, on consideration thereof,

It is ordered by the Court that said demurrer be and the same hereby is sustained.

IN UNITED STATES DISTRICT COURT

EXCEPTION TO ORDER SUSTAINING DEMURRER—Filed May 21, 1928

Now comes the plaintiff and excepts to the order of the court in the above entitled matter dated May 16, 1928, sustaining the demurrer of the defendant, J. R. Wheeler, to the complaint herein.

Dated this 21st day of May, 1928.

Miller, Mack & Fairchild, Attorneys for Plaintiff.

[fol. 8] The above exception is hereby allowed this 21 day of May, 1928.

F. A. Geiger, District Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

Before Honorable Ferdinand A. Geiger, Judge

ORDER FOR JUDGMENT—Filed June 2, 1928

This day came the parties by their counsel, Messrs. Miller, Mack & Fairchild, appearing for the plaintiff, and Messrs. Quarles, Spe[illegible] & Quarles for the defendant, and the motion of the d[illegible]lant for judgment dismissing the above titled action for [illegible]sts came on to be heard, and the

plaintiff having elected to stand on his complaint and having objected to the entry of this order,

Now Therefore on consideration thereof,

It is ordered by the Court, that the motion of the defendant be, and the same is hereby granted, and that judgment be entered in favor of the defendant dismissing the action with costs.

[fol. 9] IN UNITED STATES DISTRICT COURT

EXCEPTION TO ORDER FOR JUDGMENT—Filed June 7, 1928

Now comes the plaintiff and excepts to the order of the court in the above entitled action entered on June 2, 1928, ordering judgment in favor of the defendant and dismissing said action with costs.

Dated this 7th day of June, 1928.

Miller, Mack & Fairchild, Attorneys for Plaintiff.

The above exception is hereby allowed this 7th day of June, 1928.

F. A. Geiger, District Judge.

IN UNITED STATES DISTRICT COURT

JUDGMENT—June 2, 1928

The above entitled action having come on for trial upon the demurrer to the complaint herein before this court Hon. F. A. Geiger, judge presiding, on the fifth day of May, 1928, and the court having heard the arguments of counsel and taken said matter under advisement, and having thereafter entered an order sustaining the demurrer to the complaint herein, and said plaintiff having elected to stand upon said complaint and not to amend the same, and judgment having been ordered,

Now, therefore, upon motion of Quarles, Spence & Quarles, attorneys for said defendant,

It is hereby ordered and adjudged that the above entitled action be and the same hereby is dismissed, and that said defendant do have and recover from said plaintiff the sum of $5.00, his costs and disbursements herein.

Witness the Hon. F. A. Geiger, judge of the United States District Court for the Eastern District of Wisconsin, at Milwaukee, Wisconsin, this 2nd day of June, 1928.

(Signed) B. H. Westfahl, Clerk.

[fol. 10] IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed June 29, 1928

To Quarles, Spence & Quarles, attorneys for the defendant, J. R. Wheeler, and B. H. Westfahl, clerk of the aforesaid court:

Please take notice, that the pr-intiff above named appeals to the United States Circuit Court of Appeals for the Seventh Circuit from the judgment rendered by the above Court entered herein on the 2nd day of June, 1928, in favor of the defendant and against the plaintiff dismissing the complaint of the plaintiff, with costs, in favor of the defendant, and from the whole of said judgment.

Dated this 26th day of June, 1928.

Edwin S. Mack, Arthur W. Fairchild, Leon F. Foley, Attorneys for Plaintiff. Miller, Mack & Fairchild, of Counsel.

Endorsed as follows: Eastern District of Wisconsin: ss: I hereby certify and return that I served the within Notice of Appeals on the within named Quarles, Spence & Quarles, Attorneys for J. R. Wheeler, by delivering to and leaving with J. V. Quarles, personally, a true copy thereof, this 27th day of June, 1928, at Milwaukee, Wis. R. J. White, U. S. Marshal. By W. G. Garrett, Deputy.

IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL—Filed June 26, 1928

To the Honorable F. A. Geiger, Judge of the United States District Court for the Eastern District of Wisconsin:

The above named Howard Greene, Receiver of the Bankers Joint Stock Land Bank of Milwaukee, feeling aggrieved by the judgment entered in the above entitled cause on the

2nd day of June, 1928, does hereby appeal from said judg-
[fol. 11] ment to the United States Circuit Court of Appeals for the Seventh Circuit, for the reasons set forth in the assignment of errors filed herewith, and he prays that his appeal be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said judgment was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Seventh Circuit under the rules of such court, in such cases made and provided.

And your petitioner further prays that the proper order relating to the security to be required of him be made.

Dated this 26th day of June, 1928.

Edwin S. Mack, Arthur W. Fairchild, Leon F. Foley, Attorneys for Plaintiff. Miller, Mack & Fairchild, of Counsel.

IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed June 26, 1928

Now comes the plaintiff, Howard Greene, receiver of the Bankers Joint Stock Land Bank of Milwaukee, and for his assignment of errors in the above entitled matter says that in the proceedings in this cause and in the rendition of final judgment therein there is manifest error in that:

1. The United States District Court for the Eastern District of Wisconsin erred in sustaining the demurrer to the complaint filed by the plaintiff herein, which demurrer is based on the ground that it appears upon the face of the complaint that said complaint does not state facts sufficient to constitute a cause of action.

2. The United States District Court for the Eastern District of Wisconsin erred in ordering the entry of judgment dismissing the comulaint upon the sustaining of said demurrer.

3. The United States District Court for the Eastern District of Wisconsin erred in entering judgment dismissing the complaint upon the sustaining of said demurrer.

Wherefore, the plaintiff, Howard Greene, prays that the judgment of the District Court of the United States for the Eastern District of Wisconsin may be reversed and that this [fol. 12] cause may be remanded with directions that said errors may be corrected to the end that justice may be done in the premises.

Edwin S. Mack, Arthur W. Fairchild, Leon F. Foley, Attorneys for Plaintiff. Miller, Mack & Fairchild, of Counsel.

[File endorsement omitted.]

In United States District Court

Order Allowing Appeal—Filed June 26, 1928

On motion of the plaintiff, Howard Greene, Receiver of the Bankers Joint Stock Land Bank of Milwaukee,

It is hereby ordered that an appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the judgment heretofore entered herein on the 2nd day of June, 1928, be and the same is hereby allowed, and that a transcript of the record, proceedings and documents had therein, duly authenticated, be forthwith transmitted to said Circuit Court of Appeals.

It is further ordered, that the bond on appeal be fixed at the sum of Two Hundred Fifty Dollars ($250.00).

Dated this 26 day of June, 1928.

F. A. Geiger, District Judge.

[fol. 13] Bond on Appeal for $250.00, approved and filed June 26, 1928, omitted in printing.

[fol. 14] In United States District Court

Præcipe for Record—Filed June 26, 1928

To B. H. Westfahl, clerk of the above-named court:

Please transmit to the Circuit Court of Appeals for the Seventh Circuit the following papers in the above entitled action, to-wit:

Præcipe for Summons, Summons properly endorsed with the Marshal's return, Complaint, Demurrer, Order Sustaining Demurrer, Exception to Order Sustaining Demurrer, Order for Judgment, Exception to Order for Judgment, Judgment, Notice of Appeal, Petition for Appeal, Assignment of Errors and Prayer for Reversal, Order allowing Appeal, Bond and Approval, Citation and Admission of Service, Præcipe, Certificate of Clerk authenticating the Record.

Said transcript to be prepared as required by law and [fol. 15] the rules of this Court and the rules of the United States Circuit Court of Appeals for the Seventh Circuit.

Edwin S. Mack, Arthur W. Fairchild, Leon F. Foley, Attorneys for Plaintiff. Miller, Mack & Fairchild, of Counsel.

Clerk's certificate to foregoing transcript omitted in printing.

[fols. 16 & 17] Citation, in usual form, showing service on J. V. Quarles, filed June 29, 1928, omitted in printing.

[fol. 18] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 19] Appearances of counsel omitted in printing.

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH JUDICIAL CIRCUIT

HOWARD GREENE, Receiver of the Bankers Joint Stock Land Bank of Milwaukee, Plaintiff and Appellant,

v.

J. R. WHEELER, Defendant and Appellee

STIPULATION RE PRINTING—Filed July 27, 1928

Whereas appeals in nine actions by Howard Greene as Receiver of the Bankers Joint Stock Land Bank of Milwaukee, are pending in the United States Circuit Court of Appeals for the Seventh Judicial Circuit as follows:

[fol. 20] Howard Greene, Receiver, v. George D. Bartlett; Howard Greene, Receiver, v. Geo. D. Bartlett and J. S. Bartlett;
Howard Greene, Receiver v. Leo Brucker;
Howard Greene, Receiver, v. E. W. Freischmidt;
Howard Greene, Receiver, v. Carrie Ley;
Howard Greene, Receiver, v. H. A. Moehlenpah;
Howard Greene, Receiver, v. Chas. H. Thornton;
Howard Greene, Receiver, v. W. H. Wasweyler, and
Howard Greene, Receiver, v. J. R. Wheeler,

It is hereby stipulated and agreed by and between the parties to the above entitled actions, by their respective counsel, that an order may be entered in all but one of said actions, to wit: Howard Greene, Receiver of the Bankers Joint Stock Land Bank of Milwaukee v. J. R. Wheeler, directing the Clerk of the above entitled Court to withhold the printing of the record and placing said appeals on the calendar of this Court for hearing until notice of and request therefor by counsel for one of the parties thereto to the other and to the Clerk of this Court, which request shall be made subsequent to hearing and disposition by this Court of said action entitled, Howard Greene, Receiver of the Bankers Joint Stock Land Bank of Milwaukee v. J. R. Wheeler.

Dated this 24th day of July, 1928.

Edwin S. Mack, Arthur W. Fairchild, Leon F. Foley, Counsel for Plaintiff and Appellant in each of said nine actions. Quarles Spence & Quarles, Counsel for Dedenfant and Appellee in each of said nine actions.

[File endorsement omitted.]

Appearance of counsel omitted in printing.

[fol. 21] In United States Circuit Court of Appeals

[Title omitted]

Motion for Leave to File Brief, Amicus Curle—Filed Sept. 28, 1928

Now comes Louis Quarles and Malcom K. Whyte as attorneys for Hugh Grove, et al., a Bondholders Protective

Committee under agreement dated July 15, 1927, and pray leave of the Court to file a short brief, amicus curiæ, to be considered on the above appeal. The said Bondholders Protective Committee has a substantial interest in the controversy for the reason that it owns in excess of $10,350,-
[fol. 22] 000.00 out of a total of $15,771,600.00 of the outstanding bonds of the Bankers Joint Stock Land Bank of Milwaukee.

Louis Quarles, Malcom K. Whyte. Louis Quarles and Malcom K. Whyte, Attorneys for H. W. Grove et al., Bondholders Protective Committee under agreement dated July 15, 1927.

Dated September 27, 1928.

We consent that Louis Quarles and Malcom K. Whyte may file a brief, Amicus Curiae, as prayed for above.

Edwin S. Mack, Arthur W. Fairchild, Leon F. Foley, Attorneys for Howard Greene, Receiver of Bankers Joint Stock Land Band of Milwaukee, Wisconsin, Appellant.

[File endorsement omitted.]

In United States Circuit Court of Appeals

[Title omitted]

Order Granting Leave to file Brief, Amicus Curiæ—Sept. 28, 1928

Now this day comes Mr. Louis Quarles and Mr. Malcom K. White, as attorneys for Hugh Grove, et al., a Bondhold-
[fol. 23] ers' Protective Committee under agreement dated July 15, 1927, and pray leave of the Court to file a brief amicus curiæ, to be considered on this appeal, counsel for appellant consenting thereto.

On consideration thereof leave is hereby granted accordingly.

IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER SETTING CAUSE—Oct. 2, 1928

It is ordered by the Court that this cause be, and the same is hereby set down for hearing on Tuesday, October 16, 1928.

[fol. 24] Minute entry of argument and submission October 16, 1928, omitted in printing.

[fol. 25] IN UNITED STATES CIRCUIT COURT OF APPEALS, SEVENTH CIRCUIT

No. 4065

HOWARD GREENE, Receiver of the Bankers Joint Stock Land Bank of Milwaukee, Appellant.

vs.

J. R. WHEELER, Appellee

Appeal from the District Court of the United States for the Eastern District of Wisconsin

Before Alschuler, Evans, and Page, Circuit Judges, December 13, 1928

OPINION BY PAGE, Cir. J.—Filed Dec. 13, 1928

The Federal Farm Loan Board (here called Board) made an assessment against the stockholders of an insolvent Joint Stock Land Bank under Section 812, Title 12, United States Code Annotated.* The District Court sustained the demurrer to the complaint and plaintiff elected to stand on his complaint. The complaint alleged an assessment and direction by the Board to the receiver to collect.

*Sections referred to herein, unless otherwise designated, will be found in Title 12, U. S. Code Ann. For original Farm Loan Act, see 39 U. S. Statutes at Large, p. 360.

Appellee's position is: (a) that the Board is without power to make such assessment or enforce the personal liability of stockholders; (b) that a receiver has no legal right to maintain this action.

It is first urged that the powers of the Board are limited to those enumerated in Section 831, plus such supervisory powers as are incident thereto, set out in clauses (i) and (j) thereof. So many powers are given to the Board by the Act which are not found in Section 831 that we must hold the powers of the Board are not so limited. To illustrate: power to discharge certain employes is found in Section 831, but no power of appointment is there given, the power to appoint some of the officers there specified being found in Section 656; the very important power to find and declare insolvency and to appoint receivers, given by Sec-
[fol. 26] tion 961, is not found in Section 831.

The meaning of the provisions of the Act must be gained not only from its words but also from its purposes. The purposes stated in the title are:

"To provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create Government depositaries and financial agents for the United States and for other purposes."

The Act provides the machinery by which the purposes of the Act are to be accomplished. From those purposes, it appears that Congress did not intend merely to pass a law under which Federal Land Banks, National Loan Associations, and Joint Stock Land Banks might be organized, but that it also purposed to see to it that the whole undertaking, so vast that it was to be available in every community in every state of the Union, was at all times conducted under the supervision, direction and control of the Board, during the organization and establishment of those instrumentalities and during their successful operation.

The Act shows that it was anticipated that there would be cases of insolvency and failure; that in such cases the Association or Bank would cease to function normally; that if creditors, probably widely scattered, were to be protected and debtors compelled to meet their obligations, some agency, other than the Bank or the Association, would have

to intervene. That it was one of the purposes of the Act to extend the supervision of the Board so as to cover such cases and supply such agency is evidenced by the fact that it was authorized to find and declare insolvency and to appoint receivers. The moneys collected by the receiver and deposited in the Treasury are subject to the order of the Board. As one of the purposes of the Act, it was provided that, in addition to the capital stock and general assets, there should be an individual liability of stockholders, available for the payment of debts in case of insolvency.

Section 651 provides that there shall be established in the Treasury Department a Federal Farm Loan Bureau, "charged with the execution of this chapter." To "exe- [fol. 27] cute" means: " to follow out into effect" (Oxford Dict.); "to carry through so as to effect, pursue to the end, accomplish, finish, put into force" (Standard Dict.). If one of the purposes of the Act is to carry insolvent concerns through liquidation and pay their debts, then "execution" cannot be complete until that purpose has been accomplished. Inasmuch as the Federal Farm Loan Bureau can only act or find expression through the Board, it seems to follow, necessarily, that the provision in Section 651, that the Act shall be executed under the general supervision of the Board, must mean that the Board is to execute the Act.

Speaking of the Federal Farm Loan Act, Section 641 provides: "Its administration shall be under the direction and control of" the Board. "Administration" means the act of administering, especially direction or oversight of any office, service or employment, etc., management of public affairs. "Direction and control" import authority to command what shall be done, and to require obedience to those commands. It is to be noted that it is not only solvent and going concerns that are placed under the supervision, direction and control of the Board, but the whole Act is to be executed and administered under the supervision, direction and control of the Board. These provisions can only mean that there is the right in the Board to exercise those powers until the full accomplishment of the purposes of the act, one of which is to pay the debts of insolvent concerns. (Cook County Nat. Bk. v. U. S., 107 U. S. 445, 448.)

Appellee's argument that the Board is without power to make such assessments is based wholly upon the as-

sumption that its powers are only those found in Section 831, and that the provisions in paragraphs (i) and (j) of that section do not relate to any other supervision than that incidental to the powers expressly enumerated in that section. Appellee concedes that if Congress had not so enumerated the powers, but had made a general grant, covering the entire field, there would be force in appellant's argument that the power to assess is incidental to the general powers of the Board. Section 831 (i) and (j) reads:

"(i) To exercise general supervisory authority over the Federal land banks, the national farm loan associations, and the joint-stock land banks herein provided for.
[fol. 28] "(j) To exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of this chapter." *

It would be a very narrow construction to hold that the powers in (i), "to exercise general supervisory authority" mean that the Board has supervisory authority in respect only to the things enumerated in Section 831, and that it has no supervisory authority with respect to the many other powers given in the Act. It would be a perversion of the language of (j) to hold that the Board was given incidental powers as to the specific things mentioned in Section 831, but that it was given none with respect to the many powers granted to it in the other sections of the Act.

We have above pointed out: (a) that the powers in Section 831 are far from being all of the powers vested in the Board by the Act; (b) that in Sections 641 and 651 there are to be found, first, the general provision that the administration of the Act shall be under the direction and control of the Board, and, second, that the execution of the Act, charged upon the Farm Loan Bureau, shall be under the general supervision of the Board.

Under the National Banking Act, called Banking Act, there is no specific provision for the making of an assessment. That matter was before the Supreme Court in 1869 in Kennedy v. Gibson, 8 Wall. 498, and the right was upheld.

Appellee's contention that the receiver has no right to maintain this suit is based very largely upon the fact that

*In the original Act the last word in clause (j) is "act."

Congress, in Section 961, copied a part, and omitted a part, of Section 192 of the Banking Act. Below are found those parts of the two sections brought under discussion by appellee (the parts in *italics* in the Farm Loan Act are not found in the Banking Act, and the italicized words at the end of the quotation from the Banking Act were omitted from the Farm Loan Act):

[fols. 29 & 30] FARM LOAN ACT

Such receiver, under the direction of the *Federal Farm Loan Board,* shall take possession of the books, records, and assets of every description of such association, collect all debts, dues and claims belonging to it, and, *with the approval of the Federal Farm Loan Board,* or upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like approval or order, may sell all the real and personal property of such associaiton, on such terms as the *Federal Farm Loan Board of said* court shall direct.

BANKING ACT

Such receiver, under the direction of the *Comptroller,* shall take possession of the books, records, and assets of every description of such association, collect all debts, dues and claims belonging to it, and upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like order, may sell all the real and personal property of such association, on such terms as the court shall direct; *and may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders.*

[fol. 31] It is to be noted that Section 961, a part of which is quoted above, by its terms, relates only to National Farm Loan Associations, but by the provisions of Section 963 is made to apply to Joint Stock Land Banks. It is also to be noted that Sections 961 to 965 are Section 29 of the original Farm Loan Act, and the words in Section 963 "and proceedings shall thereupon be had in accordance with the provisions of this section regarding national farm loan associations," would be meaningless if not read with refer-

ence to original Section 29, because there are no such provisions in Section 963.

It is true the omission standing alone may indicate an intention to withhold from receivers under the Farm Loan Act the right of initiative in bringing suits against stockholders, given in the Banking Act, and if we found no other provision authorizing the Board to direct such actions, appellee's contention would prevail. While a court may not read into a statute language or purposes not there found, yet if that common-sense rule laid down in U. S. v. Katz, 271 U. S. 354, is to control, such interpretation must be given to the words employed, if it can reasonably be done, as will enable the instrumentality employed (in this case, the Board) to effectively accomplish all the purposes of the statute. We do not think that because the right in question was not given to the receiver, as it was in the Banking Act, that it necessarily follows that the Board does not have the power.

There are many differences between the provisions relating to the powers of the Comptroller, found in the Banking Act, and those in the Farm Loan Act relating to the powers of the Board. The Banking Act adopted the method of enumerating the powers of the Comptroller, and although it has been held that he has incidental implied powers, for instance, the power to fix and direct the payment of the individual liability of stockholders (Casey v. Galli, 94 U. S. 673, 681,) we do not find in the Banking Act any provision like that in Section 641, namely "its administration shall be under the direction and control of the Board," or like the provisions of Section 831 (i) and (j), set out above. We find some powers expressly given the Comptroller that are not so expressly given to the Board.

It is pointed out that Section 192 of the Banking Act provides that the Comptroller shall give notice to prove claims and that Section 194 of that act provides for an allowance of claims, payment of dividends, and return of [fol. 32] any surplus to the stockholders, and it is argued that because those provisions are not in the Farm Loan Act it was intended that the receiver should have no power to enforce the stockholders' liability. We cannot agree that

that is a legitimate conclusion, because the presentation and allowance of claims, the payment of dividends, and the return of any surplus are necessary details in the administration of an insolvent estate, regardless of the stockholders' liability. Obviously, we think, the power to do those things was vested in the Board.

We find no purpose in the Farm Loan Act to give to the Board narrower powers than those given the Comptroller under the Banking Act. On the contrary, in Section 961 is found a provision broadening the Board's powers. It gives to the Board and the court control over certain acts that are by Section 192 of the Banking Act wholly under the control of the court.

In Kennedy v. Gibson, 8 Wall. 498, (505) the court said:

"The receiver is the instrument of the comptroller. He is appointed by the comptroller, and the power of appointment carriers with it the power of removal. It is for the comptroller to decide when it is necessary to institute proceedings against the stockholders to enforce their personal liability, and whether the whole or a part, and if only a part, how much, shall be collected. These questions are referred to his judgment and discretion, and his determination is conclusive. The stockholders cannot controvert it."

All of those things were true, regardless of the question as to whether the receiver was authorized by the act to bring a suit to establish the individual liability of the stockholders.

In Richmond v. Irons, 121 U. S. 27 (48) the liquidation of a National Bank's affairs was involved. The court said:

"In the liquidation of such an association, those entrusted with its management occupy the relation of trustees, first for creditors, and the terms of that trust, implied by law, require them to reduce the assets of the association to money or its equivalent, and to pay out those assets or their proceeds equally among creditors."

And, again (p. 49):

"In the case of involuntary liquidation under the su- [fol. 33] pervision of the Comptroller of the Currency, the

receiver appointed by him is authorized and required, not only to collect and apply the proper assets of the bank to the payment of the debts, but also, so far as may be necessary, to enforce the individual liability of the shareholders. It thus appears that the enforcement of this liability is a part of the liquidation of the affairs of the bank; at least, so closely connected with it as to constitute but one continuous transaction. When, in the case of voluntary liquidation, the proceeding is instituted by one or more creditors for the benefit of all, by means of the jurisdiction of a court of equity, there seems to be no reason why the nature of the proceeding should be considered as changed. The intention of Congress evidently was to provide ample and effective remedies in all the specified cases for the protection of the public and the payment of creditors, by the application of the assets of the bank and the enforcement of the liability of the stockholders. Admitting that this liability is not strictly an asset of the bank, because it could not be enforced for its benefit as a corporation nor in its name, yet it is treated as a means of creating a fund to be applied with and in aid of the assets of the bank towards the satisfaction of its obligations. The two subjects of applying the assets of the bank and enforcing the liability of the stockholders, however otherwise distinct, are by the statute made connected parts of the whole series of transactions which constitute the liquidation of the affairs of the bank."

We are of opinion that, without specific provision for suit by the receiver against the stockholders, the purpose of the Farm Loan Act was to provide a continuous, effective and complete means of liquidating the debts of insolvent concerns under the supervision, direction and control of the Board, and that the language in Casey v. Galli, 94 U. S. 673, 681, applies:

"It is sufficient * * * that the comptroller has ordered that each stockholder shall pay to the receiver the par of his stock. This order cannot be controverted in a suit against the stockholder. It is conclusive upon him, and makes it his duty to pay. (Citing Kennedy v. Gibson, 8 Wall. 498.)"

[fol. 34] We are of opinion that the Board had the right to make the assessment and direct the receiver to bring this suit.

The judgment of the District Court is reversed.

[fol. 35] In United States Circuit Court of Appeals

[Title omitted]

4065

Howard Greene, Receiver of the Bankers Joint Stock Land Bank of Milwaukee,

vs.

J. R. Wheeler

Appeal from the District Court of the United States for the Eastern District of Wisconsin

Judgment—Dec. 13, 1928

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Wisconsin and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby reversed with costs; and that this cause be, and the same is hereby remanded to the said District Court.

[fol. 36] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 37] Supreme Court of the United States

Order Allowing Certiorari—Filed April 15, 1929

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified

copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ; and that the case be, and the same is hereby, advanced and assigned for argument on Monday, October 7th, next.

Endorsed on cover: File No. 34,020. U. S. Circuit Court of Appeals, Seventh Circuit. Term No. 711. J. R. Wheeler, petitioner, vs. Howard Greene, receiver of the Bankers Joint Stock Land Bank of Milwaukee, Wisconsin. Petition for writ of certiorari and exhibit thereto. Filed February 21st, 1929. File No. 34,020.